

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR.JUSTICE K.T.SANKARAN

WEDNESDAY, THE 17TH OCTOBER, 2007/25TH ASWINA, 1929

S.T.Rev.No.348 OF 2003

ORDER DATED 31.12.2002 IN AITA NO.5/1999 OF THE KERALA
AGRICULTURAL INCOME TAX & SALES TAX APPELLATE TRIBUNAL,
ADDITIONAL BENCH-I, ERNAKULAM

REVISION PETITIONER/APPELLANT/ASSESSEE:

M/S.MIDLAND RUBBER & PRODUCE COMPANY LIMITED,
BEACH ROAD, ALAPPUZHA,
REPRESENTED BY ITS CHIEF FINANCIAL OFFICER,
MR.R.VENUGOPALAN.

BY ADV.M/S.E.K.NANDAKUMAR,
JAYASANKAR.A.K.
ANIL D.NAIR,
PRIYA MAHESH
PRIYA MANJOORAN

RESPONDENT/RESPONDENT/REVENUE:

STATE OF KERALA

BY SPECIAL GOVERNMENT PLEADER MR.VINOD CHANDRAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON
17/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.Rev.No.348 of 2003

Dated, this the 17th day of October, 2007

ORDER

K.T.Sankaran, J.

The petitioner is an assessee under the Kerala Agricultural Income Tax Act. For the assessment year 1994-95, Annexure A order dated 10.2.1997 was passed by the Inspecting Assistant Commissioner, Ernakulam. Loss was occasioned to the petitioner due to damage to the stock of rubber latex and a claim for insurance was made in November, 1992. The insurance amount was received during the period of the assessment year 1994-95. The contention raised by the assessee was that insurance claim received during the year 1994-95 cannot be the subject matter of assessment.

2. Two contentions were raised by the assessee. One is that the insurance amount does not constitute agricultural income at all; and the other, if at all it constitutes agricultural income, it could only be related to 1992-93 and not 1994-95. These contentions were rejected by the assessing authority which was confirmed in appeal by the Deputy Commissioner (Appeals), Commercial Taxes, Ernakulam and in further appeal by the Agricultural Income Tax and Sales Tax Appellate Tribunal, Additional Bench-I, Ernakulam.

3. The question of law raised by the assessee reads as follows:

“In the facts and circumstances of the case ought not the tribunal have held that the insurance received would not qualify as agricultural income for the purpose of assessment under the Agricultural Income Tax?”

4. Sri.Anil D.Nair, learned counsel appearing for the petitioner, contends that under Section 4(2)(ii) of the Kerala Agricultural Income Tax Act,

1991, hereinafter referred to as 'the Act', the insurance claim received during 1994-95 in respect of the loss occasioned in the year 1992-93 could not be assessed for the assessment year 1994-95. Section 4(2)(ii) of the Act reads as under:

“4. Total Agricultural Income –

xxx xxx xxx

(2) The following income shall be deemed to be agricultural income received in the previous year, namely:-

xxx xxx xxx

(ii) When an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or liability incurred by the assessee; and where the assessee has obtained, either in cash or in any other manner any amount in respect of such loss, expenditure or some benefit in respect of such liability during the previous year the amount obtained by him, or the value of benefit accrued to him;”

5. As per Section 4, the income referred to in sub clauses (i) to (iii) of sub-section (2) shall be deemed to be the agricultural income received in the previous year. As per sub-clause (ii) of sub-section (2) of Section 4, if in respect of any loss, expenditure or liability incurred by the assessee, any amount either in cash or in any other manner is received by the assessee during the previous year, it would constitute an agricultural income of the previous year. By the deeming fiction, the amount received by the assessee in the previous year is treated as the agricultural income received in the previous year, though the loss, expenditure or liability was incurred not in the previous year but earlier. No other interpretation is possible under Section 4(2)(ii) of the Act. Therefore, the contention raised by the petitioner that the amount received as insurance claim could be related only to 1992-93 and not to the agricultural income of 1994-95 is liable to be rejected. The further contention that the amount of insurance claim received cannot be treated as agricultural

income at all is also liable to be rejected in view of Section 4(2)(ii) of the Act which covers any amount received in cash or in any other manner in respect of any loss, expenditure or liability. The loss incurred by the petitioner is a loss which is compensated by payment of insurance amount. That there was loss is not disputed. That there was payment of compensation is also not disputed. The amount paid as compensation for insurance coverage cannot but be treated as agricultural income under Section 4(2)(ii) of the Act. The contentions raised by the petitioner are devoid of merits and they are accordingly rejected. The question of law raised by the assessee is answered in the negative and in favour of the Revenue.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns